Supreme Court, U.S.
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No. _____

In The
Supreme Court of the United States
October Term 1997

BETTY WORLEY, as administratrix of the Estate of Roy E. Worley, deceased; and as next friend for the children of the deceased, Christopher Worley and Robert Worley, as the next of kin under the laws of the State of Georgia, *et al.*,

Petitioners,

v.

RICHMOND COUNTY, GEORGIA, *et al.*,

Respondents.

Petition For a Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

JOHN P. BATSON
Counsel of Record
Attorney for Petitioners
P.O. Box 3248
Augusta, GA 30914-3248
(706) 737-4040

JOHN P. CLAEYS
Attorney for Petitioners
440 Greene Street
Augusta, GA 30901-1691
(706) 722-8998

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QUESTIONS PRESENTED

1. Is the standard of a Fourteenth Amendment claim, against a pursuing officer for a 100 mph chase into a known dangerous curve where a suspect's car predictably careens into the innocent travelers' car, killing two and injuring a third, reckless disregard, gross negligence, or shocks the conscience; or is the claim more properly a Fourth Amendment claim under the objective reasonableness or other balancing standard?

2. Is a claim stated under the Fourteenth Amendment in a complaint by innocent travelers against a pursuing officer alleging among other facts, a nighttime, auto chase of a suspect in a possibly stolen car, at 100 mph into the inside lane of a known dangerous curve, causing the suspect's vehicle to predictable careen into the outside lane, crashing head-on into the vehicle carrying Plaintiffs, killing two and injuring a third?

3. Should redress offered travelers innocently following the state mandated rules of the road, who are predictably injured by an ongoing, intentional attempt to search and seize a suspect, be governed by the a more onerous Fourteenth Amendment standard than the Fourth Amendment's standard of objective reasonableness, which would be available to any suspect which the officer pursued to seize or search, and is a claim stated under a Fourth Amendment objective reasonableness, or other, standard?

4. What standard applies to supervisor(s), and is a claim stated against one or more supervisor(s)?

5. Whether the individual officer and supervisor(s) are protected by qualified immunity?

6. Is the standard of entity liability independent from individual liability, and what is the entity liability standard?

LIST OF PARTIES

The following individuals or entities may have an interest in the outcome of this appeal:

Baldwin, Jerry - Defendant-Respondent
Batson, John P. - Attorney for Plaintiffs-Petitioners
Bowen, The Hon. Dudley H. - District Court Judge
Burnside, Wall, Daniel, Ellison & Revell - Attorneys for Appellees-Respondents
Burnside, Thomas R. Jr.
Burnside Thomas R., III
D'Alessio, Laurie S.
Ellison, James W.
Revell, Harry D.
Wall, James B.
Burdette, Barbara - Administratrix of Rhett Burdette, Jr. estate, and next of kin under the laws of the State of Georgia, and natural guardian of Brian Burdette, Eric Burdette, Daniel Burdette, and Jamie Burdette, as next of kin.
Claeys, John P. - Attorney for Plaintiffs-Petitioners
John Doe Supervisors - Defendants-Respondents
Rice, Conway - Plaintiff-Petitioner
Richmond County, Georgia - Defendant-Respondent (now Augusta Georgia)
Sconyers, Larry - Mayor of Augusta Georgia
Handy Freddie L. - Mayor Pro Tempore, Augusta, Georgia
Beard , Lee - Commissioner Augusta-Richmond County
Bridges, Ulmer - Commissioner Augusta-Richmond County
Brigham , Jerry - Commissioner Augusta-Richmond County

Brigham Henry, H. - Commissioner Augusta-Richmond County

Kuhlke, William - Commissioner Augusta-Richmond County

Mays, Wm. Willie H., III - Commissioner Augusta-Richmond County

Powell, J.B. - Commissioner Augusta-Richmond County

Todd, Moses - Commissioner Augusta-Richmond County

Zetterberg, Robert - Commissioner Augusta-Richmond County

Webster, Charles - Defendant-Respondent, Sheriff of Richmond County

Worley, Betty - Administratrix of Roy Worley estate, and next of kin under the laws of the State of Georgia, and natural guardian of Christopher Worley and Robert Worley, as next of kin.

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OPINIONS BELOW

This petition is from an Eleventh Circuit unpublished opinion. *Worley, et al. v. Richmond County, Georgia, et al.*, No. 95-9524 (11th Cir. July 17, 1997)(*per curiam*)(Edmondson, J., Kravitch, J. and Henderson, J.). (App. 32). The district court's order which was appealed is *Worley, et al., v. Richmond County, Georgia, et al.*, No. CV192-008 (S.D.Ga. Order of Nov. 21, 1995). (App. 22).

STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTES INVOLVED

42 U.S.C. § 1983.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress.

STATEMENT OF THE CASE

Course of Proceedings

The complaint was filed by the survivors and estate of Roy Worley - Betty Worley, his wife, and two children, Christopher and Robert; the survivors and estate of Rhett Burdette - Barbara Burdette, his wife, and their children Brian, Eric, Daniel and Jamie; and a third passenger, Conway Rice, who was seriously injured. Reference will be to Plaintiffs and not in their representative capacities. This is an action brought pursuant to 42 U.S.C. § 1983 with supplemental state claims for the deaths and injuries caused by a high speed, nighttime police pursuit of a suspect who predictably lost control and crashed into the Plaintiffs' vehicle in the oncoming, outside lane of a known dangerous curve, where the chase entered the curve at over 100 mph, killing two and injuring a third. The complaint has been dismissed.

Original Complaint and Dismissal

The original complaint was filed in January 1992. *Worley, et al., v. Richmond County, Georgia, et al.*, No. CV192-008 (S.D.Ga.)(App. 1). It was dismissed for failure to state a claim. *Worley, et al., v. Richmond County, Georgia, et al.*, No. CV192-008 (S.D.Ga. Order Sept. 15, 1993)(R.1-8).

The First Appeal

On appeal the Eleventh Circuit panel of Tjoflat, CJ., Anderson, J. and Paine, J. vacated the district court's order and remanded, implicitly finding a claim could be stated. *Worley, et al. v. Richmond County, Georgia, et al.*, Eleventh Cir. No. 93-9226 (Jan. 24, 1995)(App.9-11). The panel objected that the "rights secured by those constitutional provisions that appellees supposedly violated are nowhere mentioned" in the complaint. (App. 10). The panel required this Petitioner to "specify, in separate counts as required by the Federal Rules of Civil Procedure, precisely which of appellant's constitutional rights

the respective appellees infringed." (App. 10).

The First Amended Complaint

The First Amended Complaint was filed. *Worley, et al., v. Richmond County, Georgia, et al.*, No. CV192-008 (Mar. 27, 1995)(R.1-12)(App.12-21).

Claim I asserted a Fourth Amendment claim that the Amendment protects "'other seizures' of free citizens. *Graham v. Connor*, 109 S.Ct. 1865 (1989)" under standards of objective reasonableness, recklessness or shocks the conscience, against the pursuing officer, the supervisor(s) and the entity. (App. 19). The facts supporting the claim against Defendant officer Baldwin, who was in the pursuing vehicle, which are the facts about the chase, are discussed below in *Statement of Facts*.

Entity liability was sought under three theories. First, through an avowed policy of no restriction on the manner of which chases are conducted regardless of circumstances. The Sheriff, as policy maker, lets the officers begin, conduct and continue chases with unguided discretion. The second and related theory was through knowledge of prior chases under similar circumstances, where risks of needless injury were apparent, and the chase caused similar serious results. It was alleged that the department's existing chase practices were substantially likely to harm other drivers on the roadways, by the "intentional, reckless or grossly negligent manner in which chases were initiated, conducted, not supervised and not stopped". A third theory was that the chase practices were an extension of a retaliatory use of force against any citizen who resisted the department's unlawful force. (App.15-19).

Supervisory liability, against unknown supervisors, was sought on two theories.[1] The first, a personal participation

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[1] The magistrate stayed the Defendants' responses to Plaintiffs' discovery, which might have yielded more detail for another amended complaint, where the facts were within the

theory alleged that one or more supervisors met the standards of misconduct alleged against Baldwin, knowledge of an egregiously high speed chase into the inside lane of a known deadly curve, where the chase lasted long enough for one or more supervisors to have intervened by radio. Next, liability was sought against one or more supervisors because of the prior chases, and the allegation that they knew or should have known that the existing policy of unfettered discretion was needlessly and arbitrarily depriving citizens of rights. (App. 16-19).

Claim II was a Fourteenth Amendment Claim, which asserted interests of bodily integrity, as a traveler, "whether emanating from the First or Fourteenth Amendments ... or the liberty or property interest to use the highway in commerce without arbitrary state takings of these protected life, liberty and property interests." (App. 19). The standards asserted against the officers were recklessly or shockingly conducting the chase. (App. 20). The claim against the County was asserted under a deliberate indifference theory. (App. 20).

Claim III and Claim IV asserted state claims which are irrelevant to this petition. The Complaint also sought injunctive relief to change policies or training which caused the unconstitutional deprivations. The injunctive relief sought is not relevant to this petition.

Another motion to dismiss was filed. (R.1-15). Plaintiffs argued the County could be liable under the Fourteenth Amendment regardless of the standard of liability applied as against officers, asserting the principle from *Fagan v. City of Vineland*, 22 F.3d 1283, 1292 (3d Cir. 1994), under a standard of deliberate indifference for policies, practices or customs which cause the deprivation. Plaintiff also argued the County was liable under the Fourth Amendment asserting an objective reasonableness standard, citing *Brower v. County of*

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knowledge of the Defendants. (R.1-14).

Inyo, 489 U.S. 593, 109 S.Ct. 1378, 103 L.Ed.2d 628 (1989); Graham v. Connor, 490 U.S. 386, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989); *Tennessee v. Garner*, 471 U.S. 1, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985); *see also*, *Adams v. St. Lucie County Sheriff's Dept.*, 962 F.2d 1563 (11th Cir. 1992)(chase case in which the officer rammed the suspect).

The Plaintiff responded to the motion to dismiss that a claim against officer Baldwin was stated under the Fourth and Fourteenth Amendments under standards of shocks the conscience, deliberate indifference and objective reasonableness, citing *Fagan v. City of Vineland*, 22 F.3d 1283 (3d Cir. 1994)(individual officers - shocks the conscience), *Cannon v. Taylor*, 782 F.2d 947 (11th Cir. 1986)(reckless indifference), and *Tennessee v. Garner*, 471 U.S. 1, 105 S.Ct. 1694, 85 L.Ed. 2d 1 (1985)(objectively reasonable). (R.1-18).

The argument was made that the innocent traveler, who comes within the zone of danger of a chase needlessly conducted at egregious speeds in the face of a known and looming hazard, should be protected by the Fourth Amendment, and if anything, should not have to prove a standard of liability more onerous than the standard afforded the suspect, who is apparently guilty. (R.1-18-8; Pltfs. Brf. in Rsp. to Defs. Mot. to Dismiss). The points were asserted that a chase was an activity regulated by the Fourth Amendment, vis-a-vis the suspect, and that the innocent traveler was at a location within the zone of that activity because he or she was following the state mandated rules of the road. The Fourth Amendment was the area to analyze the rights of the citizens within the zone of activity relating to the Fourth Amendment, regardless of the standard ultimately chosen. It is an affront to constitutional logic and justice if the innocent traveler is found to have no Fourth Amendment protections, and the suspect has greater protections, whether under the Fourth or Fourteenth Amendments.

Plaintiff made various arguments and analogies about

situations in which "search" and "seizure" were not limited to a literalistic construction. Plaintiff argued about how the Fourth Amendment was created to protect the innocent public from government interference, when the government had no reasonable basis for its interference, or no legitimate intent to perform the interference, which was undeniably intentional. At nighttime, at a certain speed, far short of the 100 mph at which the chase entered this known dangerous curve, the results in this case would forseeably be as deadly as the roadblock in *Brower*, to the suspect and any vehicle in the outside lane of the turn.

It was argued that Defendant officer Baldwin was not entitled to qualified immunity, arguing that such immunity had been denied in a chase which occurred in 1985, referencing *Cannon v. Taylor*, 782 F.2d 947 (11th Cir. 1986).

The District Court's Second Dismissal

The district court dismissed the Fourth Amendment claim "[b]ecause Plaintiffs cannot make this threshold showing of a seizure ...." *Worley, et al., v. Richmond County, Georgia, et al.*, No. CV192-008 (Order Nov. 21, 1995 at 4)(R.1-19-4)(App. 24). The district court required physical contact. The "zone of danger" theory was rejected, interpreting it as a theory of transference of the suspect's rights, citing cases standing for the proposition that constitutional rights are personal and cannot be vicariously asserted. (*Id.* Order at 5&6)(R.1-19-5&6)(App. 25).

The district court rejected the Fourteenth Amendment claim against Baldwin declaring the standard was "something more than gross negligence". (*Id.* at 7)(R.1-19-7)(App. 26). The district court, in note 1 (App. 26&27), referred to the varying standards in the circuits, citing the following cases which the district court read as having a "shocks the conscience" standard: *Collins v. City of Harker Heights*, 112 S.Ct. 1061 (1992); *Fagan v. City of Vineland*, 22 F.3d 1283 (3d Cir. 1994); *Temkin v. Fredrick County Comm'rs*, 945 F.2d 716 (4th Cir. 1991), *cert. denied*, 112 S.Ct. 1172 (1992); *Roach*

v. City of Fredricktown, 882 F.2d 294 (8th Cir. 1989); *Checki v. Webb*, 785 F.2d 534 (5th Cir. 1986). The district court also recognized the "reckless indifference" standard of *Webber v. Mefford*, 43 F.3d 1340 (10th Cir. 1994).

In note 1 the district court determined that "Plaintiff cannot meet any of the articulated standards. All of the standards are high and require something more than even gross negligence to sustain this type of § 1983 action. Each standard includes an element of deliberateness or a conscious response to a known, serious risk." (*Id.* at 7&8)(R.1-19-7&8)(App. 26&27). "Plaintiff must allege facts that demonstrate such egregious conduct ... that it surpasses even gross negligence." (*Id.* at 8)(R.1-19-8)(App. 27). The court posited that the act of chasing is not "in and of itself' unreasonable, and that Plaintiffs' reasoning was flawed because it was "hindsight and not grounded in the realities of law enforcement." (*Id.* at 9)(R.1-19-9)(App. 28). The court noted that the "focus instead is whether the officer's conduct was so outrageous and arbitrary to amount to a constitutional violation." (*Id.* at 9)(R.1-19-9)(App. 28). The court then looked at the facts of *Cannon, supra*, *Temkin, supra*, *Fagan, supra*, *Webber, supra*, and *Jones v. Sherrill*, 827 F.2d 1102 (6th Cir. 1987) and concluded that "the factual assertions in Plaintiffs' complaint do not present conduct which would surpass even the gross negligence standard as a matter of law." (*Id.* at 10)(R.1-19-10)(App. 29).

The district court rejected the entity liability claim using the analysis associated with *City of Los Angeles v. Heller*, 475 U.S. 796, 106 S.Ct. 1571 (1986) along with other cases, reasoning that "Plaintiffs failed to show that Deputy Baldwin inflicted any constitutional injury to Plaintiffs", and therefore, even if Baldwin's conduct was caused by County-engendered action or inaction, the County could bear no liability. (*Id.* at 12)(R.1-19-12)(App. 30). The district court, relying upon *Heller, supra*, rejected Plaintiff's assertion of *Fagan v. City of Vineland*, 22 F.3d 1283, 1292 (3d Cir. 1994), that regardless of

individual officer liability the County is liable if its policy makers act with deliberate indifference and implement a policy of inadequate training which causes a chase which is pursued in an unsafe manner. (*Id.* at 12)(R.1-19-12)(App. 30).

The Opinion from the Eleventh Circuit
Which Forms the Basis of this Petition

The dismissal was appealed to the Eleventh Circuit and the panel of Edmondson, J., Kravitch, J. and Henderson, J. affirmed the dismissal. *Worley, et al. v. Richmond County Georgia, et al.*, Eleventh Cir. No. 95-9524 (Unpub. Op. Jul. 17, 1997)(App. 32).[2]

As to the Fourth Amendment claim, the panel affirmed the dismissal interpreting *Brower v. County of Inyo*, 109 S.Ct. 1378 (1989). *Worley, et al.*, Eleventh Cir. No. 95-9524 (Unpub. Op. Jul. 17, 1997 at 5)(App. 34). The panel determined that the Fourth Amendment addresses misuse of power, "not the accidental effects of otherwise lawful government conduct." (*Id.* at 5)(App. 34). The panel noted that, "The Court distinguished the facts in Brower from a hypothetical police automobile chase where the suspect unexpectedly loses control of his car and crashes," citing to *Brower* at 1381. (*Id.* at 5)(App. 34). The panel equated the facts as alleged by Plaintiff with the *Brower* hypothetical, "[t]he facts as alleged in Plaintiff's complaint are more analogous to the hypothetical automobile chase discussed in Brower, which the Court said would not constitute a seizure of the suspect." (*Id.* at 6&7)(App. 35). The Plaintiffs analogized the *Brower* roadblock, with the known deadly curve and entering the curve

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[2] At oral argument, Petitioners-Plaintiffs submitted supplemental authority of *Lewis v. Sacramento County*, 98 F.3d 434, 441 and 446 (9th Cir. 1996)(standard of officer's liability is reckless disregard; standard for entity liability is deliberate indifference, in the training context), which is pending on this Court's docket as No. 96-1337.

at 100 mph in the inside lane, as creating a situation where loss of control would occur to a moral certainty, and to a Newtonian certainty the suspect's vehicle would end up in the outside lane, where the Plaintiffs were forced by law to travel. (R.1-1 and 12)(App. 6)(App. 18). This was rejected by the Eleventh Circuit concluding that Plaintiffs' complaint alleged a chase in which the "suspect unexpectedly loses control". (*Id.* at 5)(App. 34). The panel also concluded that Plaintiffs showed no "governmental termination of Plaintiffs' freedom of movement through means intentionally applied." (*Id.* at 7)(App. 35). The Court also rejected an alternative theory that the chase could be covered under the search clause, and the "zone of danger" theory, asserting it was an impermissible, vicarious assertion of other's Fourth Amendment rights. (*Id.* at 7&8)(App. 35&36).

The panel rejected the Fourteenth Amendment claim concluding that, "Baldwin's conduct in pursuing the suspect, as alleged in Plaintiff's complaint, might not rise even to the level of gross negligence; so, Plaintiffs' Fourteenth Amendment claim must fail." (*Id.* at 8)(App.36). The panel relied upon the Eleventh Circuit holding in *Cannon v. Taylor*, 782 F.2d 947, 950 (11th Cir. 1986), that "a person injured in an automobile accident caused by the negligent, or even grossly negligent, operation of a motor vehicle by policeman acting in the line of duty has no section 1983 cause of action for a violation of a federal rights." (*Id.* at 8)(App. 36).

The panel rejected the position that the entity was liable even if the officer were not liable, as asserted by Plaintiffs who relied upon *Fagan v. City of Vineland*, 22 F.3d 1283, 1292 (3d Cir. 1994), by relying upon *City of Los Angeles v. Heller*, 475 U.S. 796, 106 S.Ct. 1571 (1986). (*Id.* at 9&10)(App. 37&38).

The claims against the supervisors were rejected on the basis that the claim "as described in the complaint, was conducted in a manner which might not rise even to the level of gross negligence", and that "[m]ore than gross negligence is required to state a Fourteenth Amendment claim." (*Id.* at

9)(App. 37).

Supervisor Liability

The defendant John Doe Supervisors were sued alleging they failed to intervene in the chase (R.1-1-5 ¶15; App. 5; R.1-12-8 ¶16; App. 17) and because supervisors had been deliberately indifferent to the prior chases and failure to train. (R.1-1; App. 5-10; R.1-12 and ¶24; App. 15-20). The failure to train claim was clear from the complaint with language of prior chases and failure, but the complaint did not specifically mention radio contact, it mentioned failure to intervene. (R.1-1-5 ¶15; R.1-12; App. 15-20). The Eleventh Circuit hinged supervisory liability on the chasing officer's liability, finding in note 1, that because the individual was not liable, no supervisor faced liability. *Worley*, Eleventh Cir. No. 95-9524, (Unpub. Op. Jul. 17, 1997 at 9)(App. 37). It was argued that any supervisor should have known of the dangerous curve, even more so than Baldwin, and recognized with the speed that serious injury was likely, and the suspect would be in the Plaintiffs' outside lane of the curve.

No Availability of State Tort Law

The Complaint and First Amended Complaint also alleged that the Plaintiffs and others similarly situated, injured by the reckless actions of the Richmond County officers, had no adequate remedy at law under the laws of the State of Georgia. (R.1-1-6¶12)(App. 5)(R.1-19-¶12)(App. 17).

There is no state tort remedy available to these Plaintiffs, but had the injury occurred in other counties, a remedy would have been available. *Mixon v. City of Warner Robins*, 264 Ga. 385, 444 S.E.2d 761 (1993)(high speed pursuit initiated or maintained with a threat to public safety higher than ordinarily incident to high speed states claim); *see also*, O.C.G.A. § 40-6-6(d)(state law duty to pursue only with due regard of other drivers).

The injuries were caused by an agent of Richmond County, Georgia. In Georgia, Counties have sovereign

immunity. Counties may waive their sovereign immunity, as to incidents such as the one complained of, if qualifying liability insurance is purchased. However, Richmond County has not purchased such insurance, although it does have a risk management department, which is not a waiver of sovereign immunity under O.C.G.A. § 45-9-1, *et seq. Logue v. Wright*, 260 Ga. 206 (1990).

Statement of Facts

The facts as alleged were "short and plain" and devoid of detail. The detail of what happened before the suspect predicably catapulted across the road into the path of the Plaintiffs is within the knowledge of the Defendants, and largely not available to Plaintiffs without response to formal discovery. On remand from the Eleventh Circuit, discovery was stayed until after the court ruled on the motion to dismiss. (R.1-14; Order Mar. 31, 1995). There was therefore no more detail to substitute for the facts originally pleaded.

As determined below, the liability of the supervisory and entity defendants was hinged upon the finding that liability could not be proven as against the officer. Petitioner asserts that the facts do state a claim against the individual officer, even under a shocks the conscience standard, because of the common sense predictability of the circumstances.

Plaintiffs were entitled to have the record construed in the light most favorable to them, as to whether it appears beyond doubt that Plaintiffs can prove no set of facts which would entitle them to relief. *See*, *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993); *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957). Because this was a motion to dismiss, the standard Plaintiffs applied in putting forward facts was such facts as one might reasonably expect to show from inference, drawn from the complaint. The Complaint is found at App. 1-8, and the Amended Complaint is at App. 12-21.

Details of the Chase

On the night, of January 23, 1990, Richmond County Sheriff's Department Deputy and Defendant Jerry Baldwin was several miles east of the point of collision chasing a suspected stolen vehicle heading west. (R.1-1-¶14-18; App. 5&6) (R.1-12-¶15-18; App. 17). At about the same time, the Plaintiffs' decedents, Roy Worley and Rhett Burdette, Plaintiff Conway Rice and another, were getting in their car to travel east. The Plaintiffs' car and the suspected stolen car would thereafter crash head-on, when the suspected stolen vehicle, which was pursued by Defendant Baldwin into a known dangerous curve at speeds of over one hundred miles an hour, would predictably lose control, and predictably catapult into the outside lane and the oncoming Plaintiffs, killing Mr. Burdette and Mr. Worley, and injuring Conway Rice. (R.1-12-¶¶19-23; App. 18&19).

At one or more times during the chase, but before the crash, the vehicle being chased almost lost control, a fact which the Defendant Officer knew and reported, an inference from a set of facts which could be proven. (Inference)(R.1-12; App. 17-21). Defendant officer Baldwin and the unknown superiors were in radio contact throughout the chase, which lasted long enough for supervisory intervention. (R.1-12-¶16; App. 17). In spite of the circumstances (vision restricted by darkness, a two lane road with a known dangerous curve, a suspect unfamiliar with a stolen car), and the history and nature of chases that the longer they last, the more inevitable was an accident, (R.1-12-¶17; App. 17), yet no restraints were imposed upon the speed or manner of the chase in deliberate indifference to the circumstances. (R.1-12-¶16-22; App. 17&18). Given the circumstances, with serious or deadly consequences, given the corner and the speed, was of a shocking moral certainty. (Inference). The circumstances were "tantamount" to the *Brower* roadblock. (R.1-12-9 ¶22; App. 18). Officer Baldwin and his supervisors knew or should have known that it is the

officer who controls the speed of the chase. (R.1-12-¶18-22; App. 17&18). The dangerous curve where the accident occurred is a memorable one. (Inference). If entered at speeds exceeding 100 mph, it was tantamount to a known road block for the suspect, who was likely to go out of control and forseeably cross into the path of oncoming traffic. (R.1-12-¶¶21-22; App. 18). Defendant Baldwin, the supervisor of the chase, or his trainers knew, or should have known, the roads on which Baldwin was chasing the suspect, so Defendant Baldwin should and could change his chase speed or quit the chase, when approaching the curve, so he would not needlessly endanger innocent citizens. (R.1-12-¶¶9-36; App. 16-20).

REASONS FOR GRANTING THE WRIT

This Court has recognized the importance of resolving the standard of liability in chase cases where a passenger of the suspect vehicle is injured, by granting certiorari in *Lewis v. Sacramento County*, 98 F.3d 434 (9th Cir. 1996), *cert. granted* No. 96-1337. (Oral argument, Dec. 9, 1997).

Worley offers the opportunity to address standards regarding innocent travelers where the chase has predictably disastrous results. *Worley* can be addressed after, or in light of *Lewis*. *Worley* offers a good procedural base to examine protections for innocent travelers under the Fourth Amendment, which naturally accommodates the contradictory interests of public safety, where the manner of enforcing the law creates a hazard to public safety.

Worley is the type of case which will happen repeatedly, and is of greater public concern than a *Lewis* type case, in which the officer, while trying to stop, injures someone associated with the suspect's vehicle. *Worley* is of course about cars, and the fact that *Lewis* involves motorcycles may give lawyers cause to needlessly distinguish immaterial facts. Most chases are more like *Worley* and will occur with some variation of a known

hazard (road or traffic condition), of excessive speed, with results predictable by common sense and the laws of physics, with serious or deadly injuries to innocent travelers. Chases of the *Worley* nature beg for clear Constitutional factors regarding chase continuation decisions.

The auto and the roadways are America's second home. The right to travel, and the technology and infra-structure to do it, define our privileges and immunities of national citizenship, worldwide. *Worley* gives this Court the opportunity to consider the standard of liability as applied to innocent travelers under the Fourth Amendment, the amendment most closely addressing the government conduct at issue. *See Brower v. County of Inyo*, 489 U.S. 593, 109 S.Ct. 1378, 103 L.Ed.2d 628 (1989); *Graham v. Connor*, 490 U.S. 386, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989); *Tennessee v. Garner*, 471 U.S. 1, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985). Regardless of the details of the standard enunciated in *Lewis*, in a Fourteenth Amendment context as to suspects, because innocent travelers are within the zone of danger of chases, clearly Fourth Amendment activity, the Fourth Amendment is a more germane locale for the dialogue as to innocent travelers. If the dialogue is held within the Fourth Amendment, there is a greater likelihood that the principles enunciated will be less likely to create a situation in which to seek redress, the innocent traveler must jump a higher hurdle than the apparently guilty suspect—a result which turns Constitutional logic on its head and casts a dark shadow on Justice in the eyes of the innocent public. Justice with a common sense of proportion demands that innocent travelers, under appropriate circumstances, deserve more protection than a known dangerous suspect.

The Fourth Amendment was designed to protect the innocent from intentional abuses of power, whether probable cause allowed a legitimate focusing of government power on an individual, or whether there was no probable cause. The Fourth Amendment protects those citizens within the zone of the

power used by the government to intentionally to take action traditionally associated with the general body of search and seizure law. With modern technology and state mandated requirements which place innocent citizens in harm's way, ancient and historical, literal definitions of search and seizure ought not preclude future vitality of the Fourth Amendment. Innocent travelers deserve greater protection than fleeing suspects, and the Fourth Amendment and juries have room for reasoned balancing presented in each chase. It is better that the Jury make some arbitrary final decisions, rather than district courts institutionalize arbitrary, fact-bound rules, which render Constitutional standards without rhyme or reason in countless decisions which proclaim the judicial conscience is only shocked when specific intent is patently obvious by a "ramming". These are causation cases under § 1983, without which the constitution is but a distant promise.

This Court must not adopt a "shocks the judicial conscience test", close the courtroom door, and let the carnage continue. At present, entities have no incentive to train, and are hiding behind the individual officer, by letting the officer be a maverick with unfettered discretion. This case offers the opportunity to address whether the standard for entity liability should be different from the liability standard for an individual. The Eleventh Circuit erroneously concluded it could not. The Third Circuit, in *Fagan, supra,* would find that the entity could be liable for deliberate indifference. In this case, the avowed County policy was pleaded as a total abdication by the entity of failing to impose limits on the manner in which officers conducted chases. Prior chases were pleaded. Where the policy gives the officer total discretion, and prior chases reflect deliberate indifference, *Heller, supra,* does not bar entity liability. One could make the argument that each officer is setting county policy (non-policy) or practice for chases; which is an instance in which entity liability could arguably ensue. *See e.g. Hammond v. County of Madera,* 859 F.2d 797 (9th Cir.

1988); *Mandel v. Doe*, 888 F.2d 783 (11th Cir. 1989) (physician's assistant only medical provider at jail, became jail's medical policymaker). Because the entity is the only source to realistically stop the carnage produced by their deputies and automobiles, this Court needs to establish guidelines for entity chase liability, one way or the other. Training and implementation must include balancing of the public's safety—the fundamental purpose of law enforcement—which has become lost in the search.

This case will give the Court the opportunity to apply the standard enunciated in *Lewis*, or a more appropriate innocent traveler standard to a short and concise complaint. Contrary to the erroneous rulings of the Eleventh Circuit and District Court, the Complaint does allege a known hazardous condition (the known dangerous curve) and egregiously excessive speed (100 m.p.h.), which forseeably caused a suspect to lose control and predictably crash into the path of innocent travelers. To say that similar cases will recur in the forseeable future is an understatement. The physics of the predictability, of why, when and where the suspect would lose control with tragic results for suspect or traveler, is a hallmark that needless power has been applied, and offers the opportunity of meaningful, understandable, legal guidelines which could save lives. In the name of following the precedent established by *Lewis* and this case, local law enforcement could initiate balanced chase training, which truly serves the ends of protecting the public, without appearing to be soft on criminals.

This case offers the opportunity to address qualified immunity. The Eleventh Circuit erroneously would grant qualified immunity and the Ninth Circuit, *Lewis, supra*, would not.

The rule of *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189, 109 S.Ct. 998, 103 L.Ed. 2d 249 (1989) is not violated to find that the government should be liable for injuries caused to innocent

travelers by a chase. But for the fact that the state compels innocent travelers to travel determined roadways, the citizen's path, would not be in the predictable zone of the chase's danger.

CONCLUSION

For the reasons stated, the writ should be granted.

Alternatively, depending on the scope and detail of this Court's decision, this might be a case for summary reversal, and remand to the Eleventh Circuit, on one or more issues, depending upon the details of the outcome in *Lewis, supra.* Consideration of this petition ought be delayed until after *Lewis, supra,* has been decided, and the parties have been requested to re-argue aspects of this petition in light of this Court's *Lewis* decision.

Respectfully submitted this 15th day of October, 1997.

John P. Batson
Counsel of Record
Attorney for Petitioners

John P. Claeys
Attorney for Petitioners

John P. Batson
303 10th St.
P.O. Box 3248
Augusta, GA 30914-3248
706-737-4040

No. _____

In The

Supreme Court of the United States

October Term 1997

BETTY WORLEY, as administratrix of the Estate of Roy E. Worley, deceased; and as next friend for the children of the deceased, Christopher Worley and Robert Worley, as the next of kin under the laws of the State of Georgia, *et al.*,

Petitioners,

v.

RICHMOND COUNTY, GEORGIA, *et al.*,

Respondents.

Petition For a Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

APPENDIX TO CERTIORARI PETITION

APPENDIX

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

The Estate of ROY E. WORLEY, through Betty Worley, as Administratrix of the Estate of ROY E. WORLEY, deceased, and Betty Worley, as next friend for the children of the deceased, Christopher Worley and Robert Worley as the next of kin under the laws of the State of Georgia,	*	CIVIL ACTION NO. CV192-008
The Estate of RHETT BURDETTE, JR., through Barbara Burdette, as Administratrix of the Estate of RHETT BURDETTE, JR., deceased, and Barbara Burdette as next friend of the children of the deceased, Brian Burdette, Eric Burdette, Daniel Burdette and Jamie Burdette, as the next of kin under the laws of the State of Georgia,	*	COMPLAINT JURY TRIAL DEMAND
CONWAY RICE,	*	
Plaintiffs,	*	
vs.	*	
RICHMOND COUNTY, GEORGIA, through Henry Brigham	*	

in his official capacity as the Chair of the Richmond County Commissioners;

CHARLES WEBSTER, individually and in his official capacity as the Sheriff of Richmond County County, Georgia;

JERRY BALDWIN, individually and in his official capacity as an officer with the Richmond County Sheriff's Department; **[end 1]**

JOHN DOE, SUPERVISOR, whose name is unknown, individually and in the official capacity of each as a supervisor with the Richmond County Sheriff's Department;

Defendants.

COMPLAINT

Jurisdiction and Venue

1. This action is brought pursuant to 42 U.S.C. § 1983, 1985(3) and 1988 and the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, and the Constitution and laws of the State of Georgia.

2. Jurisdiction in this matter is conferred pursuant to 28 U.S.C. § 1291, 1341 (3) and (4) and the plaintiff asks the court to assert its supplemental jurisdiction.

Parties

3. Plaintiff Roy E. Worley was an adult male citizen. He was deliberately, reckless or negligently killed by the actions

and inactions of the Defendants. The estate of Roy E. Worley brings this action through Betty Worley, the wife of the decedent. The next of kin, who have standing to bring the wrongful death claim under Georgia law, are the decedent's wife Betty Worley and his minor children, Christopher Worley and Robert Worley, and their interests are represented by Betty Worley the mother, as next friend.

4. Plaintiff Rhett Burdette is an adult male citizen. He was deliberately, reckless or negligently killed by the actions and inactions of the Defendants. The estate of Rhett Burdette brings [end 2] this action through Barbara Burdette, the wife of the decedent. The next of kin, who have standing to bring the wrongful death claim under Georgia law, are the decedent's wife Barbara Burdette and his minor children, Brian Burdette, Eric Burdette, Daniel Burdette and Jamie Burdette, and their interests are represented by the mother, as next friend.

5. Plaintiff Conway Rice is an adult male citizen. He was injured seriously by the deliberate, reckless or grossly negligent actions and inactions of the Defendants.

6. The County of Richmond is sued through its Commissioners and the Chair of the Commission, Henry Brigham, in his official capacity, because the actions and inactions of the Defendants which caused injury to the plaintiff were done pursuant to policy, practice, custom or usage of the Defendant Richmond County pursuant to ordinances or policies which are unconstitutional on their face, or unconstitutional as implemented, or because under the laws of the State of Georgia the Sheriff is the elected chief law enforcement officer and his policies, with respect to law enforcement and chases, may be deemed the policies of the Defendant County, and they caused a violation of the rights of the Plaintiffs'.

7. The Defendant Charles Webster, is sued individually and in his official capacity as the Sheriff of Richmond County because the actions he took which gave rise to this claim were done under color of law as the chief law enforcement Officer of

Richmond County as its elected Sheriff. **[end 3]**

a. Defendant, Charles Webster, is the elected Sheriff of Richmond County under the laws of the State of Georgia, and is the chief law enforcement officer for Defendant County, and as such is responsible for the daily operation of Richmond County's law enforcement, including the establishment of the policies, practices, and customs as to when a vehicle chase should be initiated, how it should be conducted, how it should be supervised and when it should be stopped.

b. During his tenure as Sheriff but prior to the complained of event, chases by his Deputies resulted in disastrous results for the deputies and citizens.

c. The Defendant Sheriff has an obligation to use reasonable management practices to investigate apparent needless injury and he knew or should have known that the existing chase practices were substantially likely to cause harm to the Plaintiffs, or other drivers on the roadways by the intentional, reckless or grossly negligent manner in which chases were initiated, conducted, not supervised and not stopped.

d. But for his recklessness or deliberate indifference, Defendant Webster should have known that the existing chase practices were substantially likely to result in serious injury to bystanders such as the Plaintiffs, and other citizens.

e. Defendant Webster knew or should have known that the Department's practice with respect to chases amounted to an **[end 4]** uncontrolled use of deadly force through either the Deputy driver, who controls the case, and the object of the chase, the suspect being chased.

f. As chief law enforcement officer of the Defendant Richmond County these matters are either by state law, or by practice, left in the discretion of Defendant Webster and comprise the policy of Richmond County.

g. Further, Defendant Webster has maintained a practice which has given the officer in the chase total discretion as to all chase related decisions.

8. The Defendant, Jerry Baldwin, is sued individually, and in his official capacity as an officer with the Richmond County Sheriff's Department because the actions he took which gave rise to this claim were done under color of state law.

9. The defendant, John Doe Supervisor, is sued individually and in the official capacity as an officer with the Richmond County Sheriff's Department, Richmond County because the actions he or she took, or failed to take, which gave rise to this claim were done under color of law as a supervisor with the Richmond County Sheriff's Department, Richmond County.

Facts

10. The plaintiff incorporates each and every fact alleged above.

11. That prior to this incident other chases by Richmond County officers, and other law enforcement officers, had recently resulted in severe injury to innocent people, and the Defendant **[end 5]** Sheriff knew or should have known that a practice of unlimited officer discretion in chases causes arbitrary deprivation of life, liberty and property.

12. That the Plaintiffs and others similarly situated, who are injured by the actions of officers recklessly driving vehicles for Richmond County have no adequate remedy under the laws of the State of Georgia.

13. The Department under Defendant Sheriff had practices about chases which resulted in deliberate indifference to innocent people, such as Plaintiffs, which were substantially likely to cause substantial harm to otherwise innocent citizens using the highways in an effort to take advantage of the free flow of commerce among the states.

14. On or about the 23rd day of January, 1990, the Defendant Jerry Baldwin began an automobile chase of a suspect in a car.

15. The chase lasted long enough for supervisory intervention, but there was none.

16. That given the history and nature of chases, the longer they last, the more inevitable an accident.

17. That the Defendant Jerry Baldwin chased the car of the suspect on Gordon Highway at speeds of over 100 miles per hour.

18. That it was and is the officer who controls the speed of the chase.

19. That the Defendant Baldwin knew, or should have known, the roads on which he was chasing the suspect so he could alter his chase speed, or quit after a certain period of time, or on approach **[end 6]** to the curve, so he would not needlessly endanger innocent citizens such as Plaintiffs.

20. That Defendant Baldwin maintained the 100 mph pursuit into a corner, the danger of which Baldwin knew or should have known, causing the suspects' car to cross the center line of the highway and crash into the car in which the Plaintiffs' decedents and Plaintiff Conway Rice were riding.

21. That Defendant Baldwin knew, or should have known, that at 100 mph the oncoming curve was tantamount to a known road block for the suspect and that the suspect would go out of control.

22. That Misters Worley and Burdette eventually died and Mr. Rice sustained serious injuries.

23. That the action and inaction of the Defendant Sheriff, Baldwin and John Doe Supervisors were in reckless disregard of the rights of others, and recklessly caused an arbitrary deprivation of interests protected by the United States Constitution.

24. That under the Defendant Sheriff the Department has a practice of the retaliatory use of force, and the "chase" practices were an extension of that practice, against anyone who resisted their use of force.

25. That the suspect being chased was involved in nothing more than a property crime, but Defendant Baldwin's actions caused a chase to continue to the inevitable point of the

Plaintiffs' death or injury. **[end 7]**

CLAIM I

26. The plaintiff incorporates each and every paragraph above as if fully stated herein.

27. The defendants violated the rights of the Plaintiffs under the Fourteenth and Fifth Amendments of the United States Constitution of rights protected under the First and Fourth Amendments.

CLAIM II

28. The plaintiff incorporates each and every paragraph above as if fully stated herein.

29. The Defendants violated the rights of the Plaintiffs under the Fourth Amendment of the United States Constitution.

CLAIM III

30. The plaintiff incorporates each and every paragraph above as if fully stated herein.

31. The Defendant Baldwin assaulted the suspect in the car by driving over 100 miles per hour while the suspect was being arrested or during the arrest, by pushing him inhumanely or oppressively into the curve at a recklessly dangerous speed.

32. The Defendant Baldwin has a public duty not to treat suspect inhumanely while they are being arrested.

33. The Plaintiffs were injured thereby.

Wherefore, the plaintiff prays for the following:

(a) that process issue in accordance with the law; **[end 8]**

(b) that Plaintiffs be awarded such special damages as are reasonably proven at trial including funeral expenses and medical bills;

(c) that the court award compensatory damages to the Plaintiffs against the defendants, each of them, jointly and severally for all damages allowable under federal and state law, including but not limited to past, present and future, pain, suffering, mutual anguish, lost wages, loss of life, and the full value of life for the Plaintiffs' decedents;

(d) that the court award punitive damages against each defendant individually;

(e) that the court award costs of this action including attorney's fees under 42 U.S.C. § 1988;

(f) that the court award such other and further relief as this court may deem just and necessary, including appropriate injunctive relief to prohibit further violations of the rights of the plaintiff and others.

THE Plaintiffs HEREBY REQUEST A TRIAL BY JURY.

Respectfully submitted this 15th day of January, 1992.

/s/John P. Batson
John P. Batson
Ga. Bar No. 042150
Attorney for Plaintiffs

/s/John P. Claeys
John P. Claeys
Ga. Bar No. 126325
Attorney for Plaintiffs
[end 9]

Prepared by:

John P. Batson
303 Tenth Street
Augusta, GA 30901

(404) 722-8191
[end 10]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 93-9226
Non-Argument Calendar

D.C. Docket No. CV192-8

BETTY WORLEY, as
administratrix of the Estate of
Roy E. Worley, deceased; and
as next friend for the children
of the deceased, Christopher
Worley and Robert Worley, as
the next of kin under the laws of
the State of Georgia, *et al.*,

Plaintiffs-Appellants,

versus

RICHMOND COUNTY,
GEORGIA, *et al.*,

Defendants-Appellees,

Appeal from the United States District Court
for the Southern District of Georgia

(January 24, 1995)

Before TJOFLAT, Chief Judge, ANDERSON, Circuit Judge,

and PAINE*, Senior District Judge.

PER CURIAM:

We **vacate** the district court's order dismissing appellants' complaint for failure to allege a federal tort, and **remand** the case for further proceedings. We do so because the complaint, a typical "shotgun pleading," see Pelletier v. Zweifel, 921 F.2d 1465, 1518 (11th Cir. 1991), is essentially unintelligible as a pleading and, thus, is incapable of review. On remand, therefore, the district court shall require appellants to replead their complaint.

Although we intimate no view as to whether appellants can state a federal constitutional claim, we do say this about the complaint they presented to the district court. On page 2 of the complaint, appellants stated that they were bringing suit under 42 U.S.C. §§ 1985(3) and 1988. Nothing in the complaint even purported to state a claim under section 1985(3); appellants' counsel cited section 1985(3) either out of ignorance or as a means of harassing appellees. Needless to say , appellants' repleader shall contain no reference to that section. Neither shall their repleader seek to state a cause of action under section 1988; that section creates no federal cause of action.

Claims I and II of the complaint seek recovery under the Fourth, Fifth, and Fourteenth Amendments, but the rights (secured by those constitutional provisions) that appellees supposedly violated are nowhere mentioned. In their repleader, appellants shall specify, in separate counts as required by the Federal Rules of Civil Procedure, precisely which of appellant's constitutional rights the respective appellees infringed.

Appellants requested injunctive relief. The request had no support in the complaint's allegations, appellants have

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* Honorable James C. Paine, Senior U.S. District Judge for the Southern District of Florida, sitting by designation.

provided us with no support in their briefs, and we can imagine none. Accordingly, repleader shall contain no request for injunctive relief.

SO ORDERED.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

The Estate of ROY E. WORLEY, through Betty Worley, as Administratrix of the Estate of ROY E. WORLEY, deceased, and Betty Worley, as next friend for the children of the deceased, Christopher Worley and Robert Worley as the next of kin under the laws of the State of Georgia,	*	CIVIL ACTION NO. CV192-008
The Estate of RHETT BURDETTE, JR., through Barbara Burdette, as Administratrix of the Estate of RHETT BURDETTE, JR., deceased, and Barbara Burdette as next friend of the children of the deceased, Brian Burdette, Eric Burdette, Daniel Burdette and Jamie Burdette, as the next of kin under the laws of the State of Georgia,	*	COMPLAINT JURY TRIAL DEMAND
CONWAY RICE,	*	
Plaintiffs,	*	
vs.	*	
RICHMOND COUNTY, GEORGIA, through Henry Brigham	*	

in his official capacity as the Chair of the Richmond County Commissioners;

CHARLES WEBSTER, individually and in his official capacity as the Sheriff of Richmond County County, Georgia;

JERRY BALDWIN, individually and in his official capacity as an officer with the Richmond County Sheriff's Department;
[end 1]
JOHN DOE, SUPERVISOR, whose name is unknown, individually and in the official capacity of each as a supervisor with the Richmond County Sheriff's Department;

Defendants.

FIRST AMENDED COMPLAINT

Jurisdiction and Venue

1. This action is brought pursuant to 42 U.S.C. § 1983 because one or more of the Defendants, jointly or severally, under color of law, though not necessarily within the law, subjected or caused, not necessarily with specific intent, the Plaintiffs to be deprived of one or more rights privileges or immunities secured by the Constitution and laws. Plaintiffs seek fees by 42 U.S.C. § 1988.

2. Jurisdiction is pursuant to 28 U.S.C. § 1291, 1341 (3) and (4) and the plaintiffs assert supplemental jurisdiction for claims under the laws of the State of Georgia by 28 U.S.C. §

1367.

Parties

3. Plaintiff Roy E. Worley was an adult male citizen when Defendants caused his rights to be deprived. The actions and inactions of the Defendants were deliberate, reckless, negligent, or shocked the conscience, in light of the surrounding circumstances. The estate of Roy E. Worley brings this action through Betty Worley, the wife of the decedent. The next of kin, who have standing to bring the wrongful death claim under Georgia law, are the **[end 2]** decedent's wife, Betty Worley, and his minor children, Christopher Worley and Robert Worley, and their interests are represented by Betty Worley, their mother, as next friend.

4. Plaintiff Rhett Burdette is an adult male citizen when Defendants caused his rights to be deprived. The actions and inactions of the Defendants were deliberate, reckless, negligent, or shocked the conscience, in light of the surrounding circumstances. The estate of Rhett Burdette brings this action through Barbara Burdette, the wife of the decedent. The next of kin, who have standing to bring the wrongful death claim under Georgia law, are the decedent's wife Barbara Burdette and his minor children, Brian Burdette, Eric Burdette, Daniel Burdette and Jamie Burdette, and their interests are represented by their mother, as next friend.

5. Plaintiff Conway Rice is an adult male citizen when Defendants caused his rights to be deprived. The actions and inactions of the Defendants were deliberate, reckless, negligent, or shocked the conscience, in light of the surrounding circumstances.. He was injured seriously by the deliberate, reckless or grossly negligent actions and inactions of the Defendants.

6. The County of Richmond is sued through its Commissioners and the Chair of the Commission, Larry Sconyers, in his official capacity, because the actions and inactions of the Defendants which **[end 3]** caused injury to the

Plaintiffs were done pursuant to policy, practice, custom or usage of the Defendant Richmond County Sheriff, Charles Webster, the elected chief law enforcement officer of the County and the policies, practices, customs and usages which he caused with respect to law enforcement, and in particular chases by Richmond County Deputies like Defendant Baldwin, may be deemed to be the policy, practice, custom or usage of the Defendant County.

7. The Defendant Charles Webster, is sued individually and in his official capacity as the Sheriff of Richmond County because the actions he took, or failed to take, which gave rise to this claim were done under color of law as the chief law enforcement Officer of Richmond County as its elected Sheriff.

a. Defendant, Charles Webster, is the elected Sheriff of Richmond County under the laws of the State of Georgia, and is the chief law enforcement officer for Defendant County, and as such is responsible for the daily operation of Richmond County's law enforcement, including the establishment of the policies, practices, and customs as to when a vehicle chase should be initiated, how it should be conducted, how it should be supervised and when it should be stopped.

b. During his tenure as Sheriff, but prior to the complained of event, chases by his Deputies resulted in disastrous results for the deputies and citizens.

c. The Defendant Sheriff has an obligation to use reasonable management practices to investigate apparent needless **[end 4]** injury and he knew or should have known that the existing chase practices were substantially likely to cause harm to the Plaintiffs, or other drivers on the roadways by the intentional, reckless or grossly negligent manner in which chases were initiated, conducted, not supervised and not stopped.

d. But for his recklessness or deliberate indifference, Defendant Webster should have known that the existing chase practices were substantially likely to result in serious injury to bystanders such as the Plaintiffs, and other citizens.

e. Defendant Webster knew or should have known that the Department's practice with respect to chases amounted to an **[end 5]** uncontrolled use of deadly force through either the Deputy driver, who controls the case, and the object of the chase, the suspect being chased.

f. As chief law enforcement officer of the Defendant Richmond County these matters are either by state law, or by practice, left in the discretion of Defendant Webster and comprise the policy of Richmond County.

g. Further, Defendant Webster has maintained a policy which leaves all chase related decisions to the sound judgment of the officer, in effect giving the officer unfettered discretion, making the policy void on its face, or in its implementation, of any of the necessary safeguards which protect the rights of persons similarly situated to the Plaintiffs.

8.The Defendant, Jerry Baldwin, is sued individually, and in his official capacity as an officer with the Richmond County Sheriff's Department because the actions he took or failed to take which gave rise to this claim were done under color of state law.

9. The defendant, John Doe Supervisor, whose true name and the number of such John Doe Supervisors are not known, is sued individually and in his official capacity as an officer with the Richmond County Sheriff's Department, Richmond County because the actions he or she took, or failed to take, which gave rise to this claim were done under color of law as a supervisor with the Richmond County Sheriff's Department, Richmond County.

Facts

10. The plaintiff incorporates each and every fact alleged **[end 6]** above.

11. That prior to this incident other chases by Richmond County officers, and other law enforcement officers, had recently resulted in severe injury to innocent people similarly situated to the Plaintiffs, and the Defendant Sheriff

knew or should have known that a practice of unlimited officer discretion in chases causes shocking or needless, arbitrary deprivation of life, liberty and property, and other rights privileges or immunizes of the Constitution and laws of Plaintiffs and those similarly situated to the Plaintiffs.

12. That the Plaintiffs, and others similarly situated, who are injured by the actions of officers recklessly initiating or conducting chases for Richmond County have no adequate remedy under the laws of the State of Georgia, because a County, like Richmond, which has no insurance, because it is cheaper to be self insured, has immunity from the wrongful injuries caused by the shocking or negligent chases, leaving the victims of such chases with seeking recompense from the officer, even though the officer was following County policy.

13. Plaintiffs allege that this scheme of immunity is itself a denial of the privileges and immunities of the laws under color of law and cannot be a basis for denying a claim under state law, and because of its unconstitutionality is not protected further by any ante litem notice requirement.

14. The Department, under Defendant Sheriff, had practices about chases which resulted in deliberate indifference to innocent **[end 7]** people, such as Plaintiffs, which were substantially likely to cause substantial harm to otherwise innocent citizens using the highways in an effort to take advantage of the free flow of commerce among the states.

15. On or about the 23rd day of January, 1990, the Defendant Jerry Baldwin began an automobile chase of a suspect in a car.

16. The chase lasted long enough for supervisory intervention, but there was none.

17. That given the history and nature of chases, the longer they last, an accident was inevitable on this road.

18. That the Defendant Jerry Baldwin chased the car of the suspect on Gordon Highway at speeds of over 100 miles per hour.

19. That it was and is the officer who under the policies of the Defendant County controls the speed and duration of the chase without regard to his obligations under state and federal constitution and law to Plaintiffs and those similarly situated.

20. That the Defendant Baldwin knew, or should have known, the roads on which he was chasing the suspect so he could alter his chase speed, or quit after a certain period of time, or on approach to the curve on which the collision occurred, so he would not needlessly endanger innocent citizens such as Plaintiffs, if the County's policy gave the officer the sound discretion of how to conduct such chases.

21. That Defendant Baldwin maintained the 100 mph pursuit into a corner, the danger of which Baldwin knew or should have known, causing the suspects' car to cross the center line of the **[end 8]** highway and crash into the car in which the Plaintiffs' decedents and Plaintiff Conway Rice were riding.

22. That Defendant Baldwin knew, or should have known, that at 100 mph the oncoming curve was tantamount to a known road block for the suspect, that the suspect would go out of control and crash into oncoming vehicles in the outside lane of the curve.

23. That Misters Worley and Burdette eventually died and Mr. Rice sustained serious injuries.

24. That the action and inaction of the Defendant Sheriff, Baldwin and John Doe Supervisors were in reckless disregard of the rights of others, recklessly and shockingly caused an arbitrary deprivation of interests protected by the United States Constitution and the laws and Constitution of the State of Georgia.

25. That under the Defendant Sheriff the Department has a practice of the retaliatory use of force, and the "chase" practices were an extension of that practice, against anyone who resisted their use of force.

26. That the suspect being chased was involved in

nothing more than a property crime, but Defendant Baldwin's actions caused a chase to continue to the inevitable point of the Plaintiffs' death or injury.

CLAIM I

27. The plaintiff incorporates each and every paragraph above as if fully stated herein.

28. The defendants violated the rights of the Plaintiffs under the Fourth Amendment of the United States Constitution in [end 9] that said amendment protects not only investigatory stops and arrests, but "other seizures" of free citizens. *Graham v. Connor*, 109 S.Ct. 1865, 1871 (1989).

29. That the County is liable for a policy which gives unfettered discretion to the officer and results in no consideration for other drivers, and is tantamount to no training whatsoever in this area of law enforcement where deadly and dire consequences can result to innocent bystanders from a lack of guided discretion.

30. That the County's policy itself reflects deliberate indifference to rights of Plaintiffs.

31. That Defendant Baldwin is liable because he did not conduct the chase objectively reasonably under the circumstances, because he conducted the chase recklessly, or because the manner in which he conducted the chase was shocking.

CLAIM II

32.The plaintiff incorporates each and every paragraph above as if fully stated herein.

33. The defendants violated the rights of the Plaintiffs under the Fourteenth Amendment of the United States Constitution in that said amendment protects Plaintiffs life, liberty and property, including their right to bodily integrity as another traveler whether emanating from the First or Fourteenth Amendments or as created by state law, or the liberty and property interest to use the highways in commerce without arbitrary state takings of these protected life, liberty and

property interests. **[end 10]**

34. That the County is liable for a policy which gives unfettered discretion to the officer and results in no consideration for other drivers, and is tantamount to no training whatsoever in this area of law enforcement where deadly and dire consequences can result to innocent bystanders from a lack of guided discretion.

35. That the County's policy itself reflects deliberate indifference to rights of Plaintiffs.

36. That Defendant Baldwin is liable because he because he conducted the chase arbitrarily without regard to due process or equal protection, recklessly, or because the manner in which he conducted the chase was shocking.

CLAIM III

37. The plaintiff incorporates each and every paragraph above as if fully stated herein.

38. The Sheriff is liable for the actions of his deputies under the laws of the State of Georgia.

39. The chase was performed without the requisite due regard for the safety of all persons.

CLAIM IV

40. The plaintiff incorporates each and every paragraph above as if fully stated herein.

41. The Defendant Baldwin assaulted the suspect in the car by driving over 100 miles per hour while the suspect was being arrested or during the arrest, by pushing him inhumanely or oppressively into the curve at a recklessly dangerous speed. **[end 11]**

42. The Defendant Baldwin has a public duty not to treat suspect inhumanely while they are being arrested.

43. The Plaintiffs were injured thereby.

Wherefore, the plaintiff prays for the following:

(a) that process issue in accordance with the law; **[end 12]**

(b) that Plaintiffs be awarded such special damages as

are reasonably proven at trial including funeral expenses and medical bills;

(c) that the court award compensatory damages to the Plaintiffs against the defendants, each of them, jointly and severally for all damages allowable under federal and state law, including but not limited to past, present and future, pain, suffering, mutual anguish, lost wages, loss of life, and the full value of life for the Plaintiffs' decedents;

(d) that the court award punitive damages against each defendant individually;

(e) that the court award costs of this action including attorney's fees under 42 U.S.C. § 1988;

(f) that the court award such other and further relief as this court may deem just and necessary, including appropriate injunctive relief to prohibit further violations of the rights of the plaintiff and others. **[end 13]**

THE Plaintiffs HEREBY REQUEST A TRIAL BY JURY.

Respectfully submitted this 28th day of March, 1995.

/s/John P. Batson
John P. Batson
Ga. Bar No. 042150
Attorney for Plaintiffs

/s/John P. Claeys
John P. Claeys
Ga. Bar No. 126325
Attorney for Plaintiffs

Prepared by:
John P. Batson
303 Tenth Street
Augusta, GA 30901
(404) 722-8191 **[end 14]**

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

THE ESTATE OF ROY E. WORLEY, etc., THE ESTATE OF RHETT BURDETTE, *et al.*, and CONWAY RICE,	*	
Plaintiffs,	*	CIVIL ACTION CV 192-008
vs.	*	
RICHMOND COUNTY, GEORGIA, *et al.*, CHARLES WEBSTER, etc., and JERRY BALDWIN, *et al.*,	*	
Defendants.	*	

ORDER

The above-captioned case was before this Court previously. The prior action was dismissed without prejudice because Plaintiffs failed to state a claim sounding in federal constitutional tort. Plaintiffs have filed an amended complaint pursuant to the judgment and instructions of the United States Court of Appeals for the Eleventh Circuit. Defendants move this Court to dismiss the action for a second time for failure to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b) (6). For the reasons stated below, Defendants' Motion to Dismiss is GRANTED.

I. Factual Background

On January 23, 1990, Defendant Jerry Baldwin, a deputy sheriff with the Richmond County Sheriff's Department, was **[end 1]** involved in an automobile pursuit of a suspect in a stolen vehicle. The automobiles reached speeds in excess of 100 miles per hour. During the pursuit, the suspect's vehicle crossed the center line of the road and collided with the vehicle in which Plaintiffs and Plaintiffs' decedents were riding. As a result of the collision, Roy E. Worley and Rhett Burdette were killed and Plaintiff Conway Rice was seriously injured.

On January 14, 1992, Plaintiffs filed a complaint under 42 U.S.C. §§ 1983, 1985(3) and 1988, alleging Defendants violated the Fourth, Fifth and Fourteenth Amendment rights of the decedents and Plaintiff Rice. Plaintiffs also set forth state law claims. On September 14, 1993, this complaint was dismissed because it failed to allege a federal constitutional tort claim. Plaintiffs appealed the dismissal.

II. The Eleventh Circuit Ruling

On appeal, the Eleventh Circuit described the complaint as "unintelligible" and "incapable of review." Worley v. Richmond County, Georgia, Unpublished Op. No. 93-9226 (11th Cir. Jan 24, 1995). For this reason, this Court's Order of Dismissal was vacated and the case remanded with instructions for Plaintiffs to refile their complaint. Id.

The Eleventh Circuit also mandated that Plaintiff should not state any cause of action under either 42 U.S.C. §§ 1985(3) or 1988. The Eleventh Circuit further stated that **[end 2]** Plaintiffs should not request injunctive relief because they had provided no proof that they were entitled to such relief. Id.

III. Defendants' Motion to Dismiss

Plaintiffs' amended complaint sets forth a § 1983 action for deprivation of the Fourth and Fourteenth Amendment rights of the decedents and Plaintiff Rice. The complaint also contains state law claims.

Defendants first seek to strike the portions of the

amended complaint that do not comport with the instructions and mandates of the Eleventh Circuit opinion. Defendants then seek summary disposition of all claims for failure to state a claim upon which relief may be granted. In considering Defendants' Motion to Dismiss, the factual allegations of the complaint are accepted as true and construed in a light most favorable to Plaintiffs. The motion should be granted only if it appears beyond doubt that Plaintiffs can prove no set of facts in support of their claims. Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Taylor By and Through Walker v. Ledbetter, 818 F.2d 791, 793-94 and n.4 (11th Cir. 1987), cert. denied, 489 U.S. 1065 (1989).

A. Claims Against Deputy Baldwin

Plaintiffs assert three claims against Deputy Baldwin as the pursuing officer. For the reasons stated below, each [end 3] claim fails to state a cause of action upon which relief may be granted.

1. Fourth Amendment Claim

Plaintiffs' first claim asserts Deputy Baldwin violated their right to be free from unreasonable seizures affected by the State as guaranteed under the Fourth Amendment of the United States Constitution. In analyzing this claim, the first inquiry is whether Deputy Baldwin's high-speed pursuit of the suspect, which resulted in a collision with Plaintiffs' vehicle, constituted a seizure of the suspect and of Plaintiffs. Because Plaintiffs cannot make this threshold showing of a seizure, the second inquiry into the reasonableness of the method by which the officer conducted the pursuit need not be addressed.

Plaintiffs do not allege that Deputy Baldwin's vehicle had any intentional contact with the vehicle of either the suspect or Plaintiffs. Instead, Deputy Baldwin's high-speed pursuit ended when the suspect lost control of his vehicle and struck Plaintiffs' vehicle. Every federal court faced with a Fourth Amendment claim under similar facts has held that there is no seizure if the collision is not the direct result of the officer's

physical force or show of authority, but rather the result of the suspect's loss of control of his vehicle. See Brower v. County of Inyo, 489 U.S. 593 (1989) (the Fourth Amendment addresses misuse of power, not the accidental affects of otherwise lawful government conduct); **[end 4]** Horta v. Sullivan, 4 F.3d 2 (1st Cir. 1993); Campbell v. White, 916 F.2d 421 (7th Cir. 1990), cert. denied, 499 U.S. 922 (1991); Apodaca v. Rio Arriba County Sheriff's Dep't, 905 F.2d 1445 (10th Cir. 1990); Roach v. City of Fredericktown, 882 F.2d 294 (8th Cir. 1989); Patterson v. City of Joplin, 878 F.2d 262 (9th Cir. 1989); Jones v. Sherrill, 827 F.2d 1102 (6th Cir. 1987). Consequently, there is no Fourth Amendment violation.

Faced with this authority contrary to their position, Plaintiffs attempt to recast their claim as an unconstitutional search in their Brief in Opposition to the Motion to Dismiss. Plaintiffs argue the focus should be on whether appropriate force was used leading up to the seizure, that is during the search (the chase) of the suspect. First, Plaintiffs cite no case law supporting the proposition that the governmental pursuit of a person is a search. Second, even assuming this case was analyzed as a "search" case and the government abused its power during the chase of the suspect, the facts do not support a cognizable Fourth Amendment claim. Plaintiffs assume that any violation of the suspect's rights during the chase automatically is transferrable to them. This assumption is erroneous. Geaneas v. Willets, 911 F.2d 579 (11th Cir. 1990) (constitutional rights are personal and generally cannot be vicariously asserted), cert. denied, 499 U.S. 955 (1991); United States v. Braithwaite, 709 F.2d 1450 (11th Cir. 1983) (Fourth Amendment **[end 5]** rights cannot be asserted vicariously). Here, Deputy Baldwin searched/chased the suspect, not Plaintiffs. Thus, even if the search/chase were unconstitutional, Plaintiffs' rights were not implicated.

Because Plaintiffs cannot prove any set of facts under these circumstances that would support a finding of an

unconstitutional search or seizure, their Fourth Amendment claim fails as a matter of law.

2. Fourteenth Amendment Claim

Plaintiffs next contend that the collision resulting from Deputy Baldwin's high-speed pursuit of the fleeing suspect amounted to an unconstitutional taking of their liberty and property interests in violation of the Due Process Clause. Although a person's right to life is protected by the Fourteenth Amendment, "not every deprivation of life amounts to a constitutional violation and gives rise to a claim under 42 U.S.C. 1983." Dollar v. Haralson County, 704 F.2d 1540 (11th Cir. 1983). Section 1983 claims should not be used to duplicate state tort law on the federal level. Paul v. Davis, 424 U.S. 693 (1976) (the Fourteenth Amendment is not a "font of tort law to be superimposed upon whatever system may already be administered by the States"); Medina v. City & County of Denver, 960 F.2d 1493 (10th Cir. 1992).

Injuries suffered in a collision do not amount to Fourteenth Amendment violations merely because the collision occurred as a result of a high-speed pursuit by the police. **[end 6]** Indeed, the Eleventh Circuit has held that "a person injured in an automobile accident caused by the negligent, or even grossly negligent, operation of a motor vehicle by a policeman acting in the line of duty has no section 1983 cause of action for violation of a federal right." Cannon v. Taylor, 782 F.2d 947, 950 (11th Cir. 1986). Thus, to sustain a § 1983 action for due process violations, Plaintiffs must state facts which amount to something more than gross negligence.[1]

---

[1] Other circuits have adopted different standards in analyzing police conduct. For example, some circuits require police conduct in a pursuit case to "shock the conscience." Collins v. City of Harker Heights, 112 S.Ct. 1061 (1992); Fagan v. City of Vineland, 22 F.3d 1283 (3d Cir. 1994); Temkin v. Frederick

(continued...)

First, a high-speed automobile chase by a police officer is recognized as a reasonable method of pursuing and seizing suspects. In Galas v. McKee, 801 F.2d 200 (6th Cir. 1986), the Sixth Circuit discussed the importance of allowing police officers the authority to pursue suspects. To deny them this right would "severely hamper the effective enforcement of the traffic laws" because a high-speed pursuit is a longstanding [end 7] police practice considered " 'essential to a coherent scheme of police powers.' " Id. (citation omitted); See Roach, 882 F.2d 294; Carroll v. Borough of State College, 854 F. Supp. 1184 (M.D. Pa. 1994) (police pursuit of fleeing offender is not per se unreasonable), aff'd, 47 F.3d 1160 (3d Cir. 1995).

Because high-speed pursuits are not per se unreasonable, Plaintiffs must allege facts that demonstrate such egregious conduct on the part of Deputy Baldwin that it surpasses even gross negligence. Plaintiffs' only factual assertion in the amended complaint specifically regarding Deputy Baldwin's conduct is as follows:

> That Defendant Baldwin maintained the 100 mph pursuit into a corner, the danger of which Baldwin knew

---

[1] (...continued)

County Comm'rs, 945 F.2d 716 (4th Cir. 1991), cert. denied, 112 S. Ct. 1172 (1992); Roach v. City of Fredericktown, 882 F.2d 294 (8th Cir. 1989); Checki v. Webb, 785 F.2d 534 (5th Cir. 1986). The Tenth Circuit employs a "reckless indifference" standard. Webber v. Mefford, 43 F.3d 1340 (10th Cir. 1994).

In the present case, however, Plaintiffs cannot meet any of the articulated standards. All of the standards are high and require something more than even gross negligence to sustain this type of § 1983 action. Each standard includes an element of deliberateness or a conscious response to a known, serious risk. Indeed, exhaustive research into police pursuit cases yield no case in which a federal court found a deprivation of rights under the Fourteenth Amendment under facts similar to this case. [end 7]

> or should have known, causing the suspects' [sic] car to cross the center line of the highway and crash into the car in which the Plaintiffs' decedents and Plaintiff Conway Rice were riding.
>
> That Defendant Baldwin knew, or should have known, that at 100 mph the oncoming curve was tantamount to a road block for the suspect, that the suspect would go out of control and crash into oncoming vehicles in the outside lane of the curve.

Essentially, Plaintiffs assert Deputy Baldwin should have slowed down at the curve or terminated the chase before the collision. Plaintiffs are attacking the fact that Deputy Baldwin continued his high-speed pursuit of the suspect. As **[end 8]** discussed above, however, the act of chasing in and of itself is not unreasonable. Moreover, Plaintiffs' criticism of Deputy Baldwin's actions are made in hindsight and are not grounded in the realities of law enforcement. Webber v. Mefford, 43 F.3d 1340, 1344 (10th Cir. 1994). High-speed pursuits will always involve the risk of injury to innocent bystanders. The focus instead is whether the officer's conduct was so outrageous and arbitrary to amount to a constitutional violation.

In Cannon v. Taylor, a police officer responding to a disturbance call exceeded the posted speed limit without using the vehicle's flashing lights and sirens in violation of his statutory duty. 782 F.2d at 948. The Eleventh Circuit held this conduct did not rise to the level of a constitutional deprivation but instead sounded in state negligence law. Id. at 950.

In Temkin v. Frederick, 945 F.2d 716 (4th Cir. 1991), the officer pursued a suspect who had recently stolen gasoline from a station. Their vehicles traveled at speeds between 65 and 105 miles per hour along a narrow, two-lane highway. The pursuit ended when the suspect's vehicle failed to negotiate a curve, crossed over a double yellow line, and struck a motorist traveling in the opposite direction. The pursuing officer was unable to stop in time and also struck the third party's vehicle.

The Fourth Circuit found the officer's conduct did not "shock the conscience" despite a finding that **[end 9]** the officer's conduct was "disturbing" and "lacking in judgment."

In Fagan v. City of Vineland, 22 F.3d 1283 (3d Cir. 1994), officers chased a fleeing traffic offender's vehicle at speeds of 70 to 80 miles per hour in the city. The vehicles ran through several stop signs and red lights before the suspect's vehicle struck the plaintiff's vehicle broadside. The Third Circuit found the officers' conduct did not shock the conscience. Id.; see also Webber v. Mefford, 43 F.3d 1340 (10th Cir. 1994); Jones v. Sherrill, 827 F.2d 1102 (6th Cir. 1987).

Considering that the facts of the cited cases do not arise to constitutional violations, the factual assertions in Plaintiffs' complaint do not present conduct which would surpass even the gross negligence standard as a matter of law. Thus, Plaintiffs have not stated a claim upon which relief may be granted under the Fourteenth Amendment against Deputy Baldwin.

3. Assault Claim

Plaintiffs' final claim against Deputy Baldwin is that he assaulted the suspect by chasing him into a curve at a dangerous speed. Plaintiff asserts this assault caused their injuries.

Even assuming Deputy Baldwin's high-speed pursuit constituted an assault of the suspect, Plaintiffs cannot cite any law granting them the right to recover for this conduct. **[end 10]** If any cause of action exists for assault, the right to bring it rests with the suspect. Accordingly, the assault claim is dismissed.

B. Claims Against Richmond County and Sheriff Webster

In the complaint, Plaintiffs assert the same constitutional claims against Richmond County and its Sheriff, Charles Webster, in their supervisory capacity of Deputy Baldwin, alleging these Defendants had the duty to investigate existing chase practices and to avoid a policy that gives unfettered discretion to a pursuing officer. It is well-settled law, however, that vicarious liability or respondent superior does not attach

under § 1983 for the deprivation of a federally protected civil right. City of Canton v. Harris, 489 U.S. 378 (1989).

Plaintiffs also claim these Defendants inadequately trained their law enforcement personnel, and as a result of the inadequate training, Plaintiffs' constitutional rights were violated. Indeed, Plaintiffs allege Richmond County had no real training or policies instructing the officers about high-speed pursuits, such as when a pursuit should be undertaken or abandoned.

It is true that if an alleged constitutional violation is the result of the execution of a county policy or custom or is the result of training so deficient as to amount to deliberate **[end 11]** indifference to the rights of others, then liability may attach to Richmond County and the Sheriff. Id. As discussed above, however, Plaintiffs have failed to show Deputy Baldwin inflicted any constitutional injury to Plaintiffs. Even if Deputy Baldwin's conduct was the result of an inadequate policy or deficient training, the County and the Sheriff bear no liability for actions which are not unconstitutional. See City of Los Angeles v. Heller, 475 U.S. 796 (1986); Webber v. Mefford, 43 F.3d 1340 (10th Cir. 1994); Temkin v. Frederick County, 945 F.2d 716 (4th Cir. 1991); Roach v. City of Fredericktown, 882 F.2d 294 (8th Cir. 1989); Linder v. Richmond County, 844 F. Supp. 764 (S.D. Ga.) (applying Heller to dismiss constitutional claims against a county and its sheriff where the underlying individual conduct in question did not constitute a deprivation of the plaintiff's constitutional rights), aff'd, 38 F.3d 574 (11th Cir. 1994). Thus, the inadequate training claim against the County and the Sheriff must be dismissed as a matter of law.

Plaintiffs cite Fagan v. City of Vineland, 22 F.3d 1283 (3d Cir. 1994), as the only federal appellate decision to hold to the contrary of the above authority. I find the Fagan case inappropriately expands § 1983 liability in direct contradiction to the United States Supreme Court decision of Heller and the great weight of federal authority.

Finally, Plaintiffs assert a respondeat superior state claim against Sheriff Webster, alleging he is liable for the **[end 12]** negligent actions of Deputy Baldwin. Count III of the complaint states as follows: "The Sheriff is liable for the actions of his deputies under the laws of the State of Georgia. The chase was performed without the requisite due regard for the safety of all persons." Curiously, however, Plaintiffs do not assert a negligence cause of action against Deputy Baldwin. Moreover, Defendants contend any negligence claim against Sheriff Webster is barred by the doctrines of sovereign and official immunity; Plaintiffs have failed to dispute this contention. Thus, Count III as stated above is dismissed.

IV. Conclusion

For the foregoing reasons, Plaintiffs' complaint fails to allege any facts supportive of a federal or state cause of action. Accordingly, Defendants' Motion to Dismiss is GRANTED. The issue of whether Plaintiffs' amended complaint comports with the parameters of the Eleventh Circuit's opinion need not be addressed. The clerk is instructed to ENTER FINAL JUDGMENT for Defendants and CLOSE this case. Costs are taxed against the Plaintiffs.

ORDER ENTERED at Augusta, Georgia, this 21st day of October, 1995.

/s/ Dudley H. Bowen Jr.
UNITED STATES DISTRICT JUDGE
[end 13]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 95-9524

D.C. Docket No. CV192-008

BETTY WORLEY, as
administratrix of the Estate of
Roy E. Worley, deceased; and
as next friend for the children
of the deceased, Christopher
Worley and Robert Worley, as
the next of kin under the laws of
the State of Georgia, *et al.*,

Plaintiffs-Appellants,

versus

RICHMOND COUNTY,
GEORGIA, *et al.*,

Defendants-Appellees,

Appeal from the United States District Court
for the Southern District of Georgia

(July 17, 1997)
[end 1]

Before EDMONDSON, Circuit Judge, KRAVITCH and HENDERSON, Senior Circuit Judges.

PER CURIAM:

Plaintiffs appeal from the district court's dismissal of their action against Richmond County ("the County") and individual employees of the County. We affirm.

I. Background

In 1990, Defendant Jerry Baldwin, a deputy sheriff employed by the County, was involved in an automobile pursuit of a suspect in a stolen car in which the speed reached over 100 mph. According to Plaintiffs' complaint, Baldwin pursued the suspect to a curve in the road where the suspect's car crossed the center line and collided with a car in which Roy Worley, Rhett Burdette, and Conway Rice were riding. Worley and Burdette were killed; Rice was seriously injured.

Rice and the estates of Worley and Burdette sued Baldwin, in his **[end 2]** individual and official capacity, and sued the County, through its Commissioners and Sheriff Charles Webster. The district court dismissed Plaintiffs' original complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief could be granted.

On appeal, we vacated the order of dismissal because Plaintiffs' complaint was unintelligible and incapable of review. We remanded the case to the district court, directing the district court to require Plaintiffs to replead their complaint. Plaintiffs' complaint, as repled, asserts claims against all Defendants pursuant to 42 U.S.C.§ 1983 for violations of Plaintiffs' rights under the Fourth and Fourteenth Amendments; a claim against Sheriff Webster asserting he is "liable for the actions of his deputies under the law of the State of Georgia"; and a claim against Defendant Baldwin for assault. The district court dismissed the complaint again pursuant to Rule 12(b)(6). **[end 3]**

II. Discussion

"Where the district court dismisses the plaintiff's complaint for failure to state a claim, we must determine whether, considering the facts in the light most favorable to the plaintiff, it appears beyond doubt that she can prove no set of facts that would entitle her to relief." Welch v. Laney, 57 F.3d 1004, 1008 (11th Cir. 1995) (internal quotation marks and citations omitted).

A. Fourth Amendment Claim

Plaintiffs assert that Defendant Baldwin's pursuit of the suspect, which resulted in the suspect's collision with Plaintiffs' car, was an unreasonable seizure of Plaintiffs in violation of the Fourth Amendment. We affirm the district court's dismissal of Plaintiffs' Fourth Amendment claim because Plaintiffs have alleged no true seizure. **[end 4]**

In Brower v. County of Inyo, 109 S.Ct.1378 (1989), the Supreme Court explained that "the Fourth Amendment addresses 'misuse of power,' not the accidental effects of otherwise lawful government conduct." Id. at 1381 (citation omitted). The Court stressed that a seizure must be willful to be actionable under the Fourth Amendment. Id. In Brower, the Court held that the placing of a concealed roadblock by police during a high speed chase, with headlights shining in the suspect's eyes so as to blind the suspect on approach, was a seizure. Id. At 1383. The Court distinguished the facts in Brower from a hypothetical police automobile chase where the suspect unexpectedly loses control of his car and crashes. Id. at 1381. The Court said that the latter situation was no seizure.

> It is clear, in other words, that a Fourth Amendment seizure does not occur whenever there is a governmentally caused termination of an individual's freedom of movement (the innocent passerby), nor even whenever there is a governmentally caused and governmentally *desired* termination of an individual's freedom of movement (the fleeing felon), but only when there is a governmental termination of freedom of **[end**

> 5] movement *through means intentionally applied.* That is the reason there was no seizure in the hypothetical situation.... The pursuing police car sought to stop the suspect only by the show of authority represented by flashing lights and continuing pursuit; and though he was in fact stopped, he was stopped by a different means — his loss of control of his vehicle and the subsequent crash. Id. (emphasis in original).

Other federal courts faced with Fourth Amendment claims based on a police officer's chase of a suspect when the chase ended in a collision with innocent third parties have found no seizure of the third parties. See, e.g., Campbell v. White, 916 F.2d 421, 423 (7th Cir. 1990); Roach v. City of Fredericktown, 882 F.2d 294, 296 (8th Cir. 1989); Apodaca v. Rio Arriba County Sheriff's Dep't, 905 F.2d 1445, 1447 (10th Cir. 1990). Plaintiffs have pointed to no case to the contrary, and we are aware of none.

Plaintiffs attempt to analogize the facts alleged in their complaint to the facts in Brower, arguing that Baldwin's pursuit of the suspect into the curve in the road was tantamount to purposefully causing the suspect to crash into a roadblock. The facts as alleged in Plaintiffs' **[end 6]** complaint are more analogous to the hypothetical automobile chase discussed in Brower, which the Court said would not constitute a seizure of the suspect. Even if Plaintiffs' complaint showed a seizure of the suspect, Plaintiffs have alleged no governmental termination of Plaintiffs' freedom of movement through means intentionally applied. So, we agree with the district court that Plaintiffs have alleged no seizure under the Fourth Amendment.

Plaintiffs make an alternative Fourth Amendment argument that Baldwin committed an unreasonable search in violation of the Fourth Amendment. Plaintiffs cite to no authority for the novel proposition that an officer's automobile pursuit of a person is a search, and we are aware of none. Even if Baldwin's pursuit could be considered a search of the suspect

for purposes of the Fourth Amendment, Plaintiffs may not recover for a violation of the suspect's constitutional rights. See Rakas v. Illinois, 99 S.Ct. 421, 425 (1978)("Fourth Amendment rights are personal rights that may not be asserted vicariously.")(citation omitted). Accord United States v. Braithwaite, 709 F.2d 1450, 1454 **[end 7]** (11th Cir. 1983). Because Plaintiffs' complaint asserts no search or seizure within the meaning of the Fourth Amendment, we need not address the issue of reasonableness.

B. Fourteenth Amendment Claim

Plaintiffs' complaint also alleges that Baldwin's high-speed pursuit of the suspect was an unconstitutional taking of Plaintiffs' life, liberty and property interests, in violation of the Fourteenth Amendment.

We have held that "a person injured in an automobile accident caused by the negligent, or even grossly negligent, operation of a motor vehicle by a policeman acting in the line of duty has no section 1983 cause of action for violation of a federal right." Cannon v. Taylor, 782 F.2d 947, 950 (11th Cir. 1986)(rejecting Fourteenth Amendment claim against on-duty officer who was speeding without lights or siren in response to disturbance call). See also Rooney v. Watson, 101 F.3d 1378, 1381 (11th Cir. 1996)(rejecting section 1983 claim against officer **[end 8]** who was speeding in nonemergency situation without lights or siren); Roach v. City of Fredericktown, 882 F.2d 294 (8th Cir. 1989) (upholding dismissal of section 1983 claim because officer's alleged negligence in pursuing automobile at high speed without siren did not rise to level of constitutional deprivation). Baldwin's conduct in pursuing the suspect, as alleged in Plaintiffs' complaint, might not rise even to the level of gross negligence; so, Plaintiffs' Fourteenth Amendment claim must fail.

C. Custom or Policy Claims against County[1]

Plaintiff also asserts that the County is liable (1) for maintaining **[end 9]** a policy which gives unfettered discretion to officers involved in high speed chases and (2) for failing to train officers for chases. Plaintiffs claim the County's policy reflects deliberate indifference to the rights of Plaintiffs. The County may be held liable for maintaining a policy only if that policy caused Plaintiffs to suffer a constitutional deprivation. See Rooney, 101 F.3d at 1381-82. Cf. City of Los Angeles v. Heller, 106 S.Ct. 1571, 1573 (1986)(noting that no Supreme Court case "authorizes the award of damages against a municipal corporation based on the actions of one of its officers when in fact the jury has concluded that the officer inflicted no constitutional harm.") Because the district court correctly concluded that Plaintiffs can prove no set of facts showing a deprivation of their constitutional rights, Plaintiffs may not pursue their claim against the County.[2] **[end 10]**

---

[1] Plaintiffs allege in their brief on appeal that the supervisory defendants are also liable because "they personally participated in the chase and failed to stop it." The paragraphs of their complaint to which Plaintiffs cite for support make no allegations that supervisory officers were present during the chase or personally participated in the chase. Even if Plaintiffs planned to prove that one or more supervisory defendants personally participated in the chase, through radio contact or otherwise, we have concluded that the chase, as described in the complaint, was conducted in a manner that might not rise even to the level of gross negligence. More than gross negligence is required to state a Fourteenth Amendment claim. See Cannon, 782 F.2d at 950. **[end 9]**

[2] We also affirm the district court's dismissal of Plaintiff's state law claims. Plaintiffs allege in their complaint that Sheriff Webster is liable under Georgia law for the negligent acts of

(continued...)

AFFIRMED. **[end 11]**

---

[2](...continued)
Baldwin. As the district court noted, Plaintiffs have asserted no negligence claim against Baldwin. Also, Defendants argue that a negligence claim against Sheriff Webster is barred by sovereign a official immunity. Plaintiffs do not dispute that Webster is immune, but argue that this immunity **[end 10]** deprives them of equal protection of the law. Plaintiffs cite to no support for this contention. The district court properly dismissed this claim again Webster.

Plaintiffs also allege that Baldwin's conduct, in pursuing the suspect into a curve, constituted an assault on the suspect whi injured Plaintiffs. The district court correctly dismissed the assat claim because, even assuming the pursuit could constitute an assault on the suspect, Plaintiffs cite no authority which would allow them to recover vicariously for injury to the suspect. **[end 1**

Supreme Court, U.S.
FILED
NOV 12 1997
CLERK

No. 97-692

In The

Supreme Court of the United States

October Term, 1997

BETTY WORLEY, as administratrix of the Estate of Roy E. Worley, deceased; and as next friend for the children of the deceased, Christopher Worley and Robert Worley, as the next of kin under the laws of the State of Georgia, *et al.*,

Petitioners,

v.

RICHMOND COUNTY, GEORGIA, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

JAMES W. ELLISON
Counsel of Record
Attorney for Respondents
P.O. Box 2125
Augusta, Georgia 30903
(706) 722-0768

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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STATEMENT OF CASE

On January 15, 1992, the petitioners filed this civil rights action in the United States District Court for the Southern District of Georgia against the respondents pursuant to 42 U.S.C. § 1983, 1985(3), 1988, and the First, Fourth, Fifth, and Fourteenth Amendments of the United States Constitution. Petitioners' complaint also contained various state law claims. On September 15, 1993, the Honorable Dudley H. Bowen, Jr. of the United States District Court for the Southern District of Georgia granted the respondents' motion to dismiss on the grounds that same did not sound in federal constitutional tort. Thereafter, the petitioners filed a notice of appeal to the Eleventh Circuit Court of Appeals.

On January 24, 1995, the Eleventh Circuit Court of Appeals issued an unpublished per curiam opinion vacating the District Court's order dismissing plaintiffs' complaint and remanding said case for further proceedings. The Eleventh Circuit instructed the District Court on remand to require the petitioners to replead their complaint. The Eleventh Circuit further instructed the petitioners, upon amending their complaint, to delete any claims under 42 U.S.C. § 1985(3), and 1988. The Eleventh Circuit further instructed the petitioners to delete any claim for injunctive relief. *Worley v. Richmond County, et al.*, U.S. Court of Appeals for the Eleventh Circuit, Case Number 93-9226.

Thereafter, in accordance with the instructions from the Eleventh Circuit Court of Appeals, the District Court entered an order requiring the petitioners to amend their

complaint and on March 27, 1995, the petitioners filed their first amended complaint.

The petitioners' amended complaint set forth four claims against the respondents. Petitioners' first claim for relief is founded upon an alleged violation of petitioners' rights under the Fourth Amendment of the United States Constitution. Petitioners' second claim alleges the respondents violated their rights under the Fourteenth Amendment of the United States Constitution. The third claim in petitioners' complaint alleges a state law negligence claim against the respondent sheriff. Petitioners' fourth claim is based upon alleged assault on a suspect by the respondent Baldwin resulting in injuries to the petitioners.

The respondents once again filed a motion to dismiss for failure to state a claim and on November 21, 1995, the District Court entered an order granting the respondents' motion to dismiss in its entirety dismissing all of petitioners' claims, both federal and state. Once again, the petitioners appealed this decision to the Eleventh Circuit Court of Appeals.

On July 17, 1997, the United States Court of Appeals for the Eleventh Circuit entered an unpublished per curiam opinion affirming the District Court in its entirety. On or about October 15, 1997, the petitioners filed their petition with this Honorable Court for a writ of certiorari.

COUNTERSTATEMENT OF FACTS

In the order granting the respondents' motion to dismiss the petitioners' first amended complaint, the District Court correctly noted that the following were the only factual assertions in the amended complaint specifically regarding Deputy Baldwin's conduct:

> That Deputy Baldwin maintained the 100 mph pursuit into a corner, the danger of which Baldwin knew or should have known, causing the suspects' [sic] car to cross the center line of the highway and crash into the car in which the plaintiffs' decedents and plaintiff Conway Rice were riding.
>
> That defendant Baldwin knew, or should have known, that at 100 mph the oncoming curve was tantamount to a road block for the suspect, that the suspect would go out of control and crash into oncoming vehicles in the outside lane of the curve. (Petitioners' petition for writ of certiorari, App. 27-28)[1]

In their petition before this Honorable Court, the petitioners set out factual assertions which are nowhere contained in their amended complaint. For example, the petitioners indicate in their petition that "at one or more times during the chase, but before the crash, the vehicle

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[1] In the petition, the petitioners contend that they could not allege any further facts because the District Court stayed discovery pending a ruling on the motion to dismiss. However, the District Court stayed discovery pursuant to a consent order agreed to by all parties.

being chased almost lost control, a fact which the defendant officer knew and reported . . . " (Petition for writ of certiorari at page 12)

The petitioners further set out in their petition before this Honorable Court the following factual assertion which is supposedly contained within their complaint: "defendant officer Baldwin and the unknown superiors were in radio contact throughout the chase, which lasted long enough for supervisory intervention." (Petitioners' petition for writ of certiorari at page 12) This particular factual assertion is nowhere contained in the petitioners' amended complaint filed in the District Court.

The petitioners further state in their petition that "in spite of the circumstances (vision restricted by darkness, a two lane road with a known dangerous curve, a suspect unfamiliar with a stolen car) . . . " (Petitioners' petition at page 12) This is another factual assertion which is nowhere contained in the petitioners' amended complaint filed in the District Court.

The petitioners in their petition as well as in their amended complaint also make certain arguments as though they were factual assertions. For example, the petitioners argue and allege that the chase lasted long enough for supervisory intervention, but there was none. However, there is no factual allegation in petitioners' amended complaint as to how long the chase lasted or the length of time necessary for supervisory intervention.

The petitioners argue and allege that given the history and nature of chases, the longer they last the more

inevitable an accident. There is also no factual allegation in petitioners' amended complaint supporting this argument.

Finally, petitioners argue and allege that it was and is the officer who controls the speed and duration of the chase. This is not only an argument which is wholly unsupported by any factual allegations of plaintiffs' complaint but also an unreasonable and illogical allegation. The officer was by no means the lead vehicle in the chase and, obviously, would prefer the chase to occur at the lowest speeds possible. It is illogical to assume that if the pursuing vehicle slows down that the vehicle being pursued will do the same. In fact, just the opposite is true. If the fleeing vehicle slows down, the police officer obviously will slow down as well. Furthermore, courts have held just the opposite to be the fact. *See, Jackson v. Oliver,* 514 N.W. 2d 195 (Mich. 1995) (fleeing suspect controls the speed of chase).

These "factual" allegations by petitioner should be considered by the Court as merely argument on behalf of the petitioners, not the type of material factual allegations which are accepted as true for the purpose of a motion to dismiss.

There is no allegation by the petitioners in their amended complaint that there was any contact between the respondent deputy Baldwin's vehicle and the vehicle of either the suspect or the petitioners at any point.

ARGUMENT AND CITATION OF AUTHORITY: REASONS FOR DENYING THE WRIT

I. *Lewis v. Sacramento County*

The petitioners argue to this Honorable Court that the writ should be granted in this case because of its similarity with *Lewis v. Sacramento County*, 98 F.3d 434 (9th Cir. 1996), *cert. granted*, No. 96-1337. However, the *Lewis* case is completely inapposite factually with the case at bar and any decision in *Lewis* will have no impact on the holding in this case.

Lewis v. Sacramento County involves a particularly egregious case in which a police vehicle crashed into a juvenile on a fleeing motorcycle at high speed under circumstances in which virtually no crime had been committed by the juveniles on the motorcycle. The instant case involved a collision between the fleeing suspects and the vehicle in which the petitioners were passengers. The pursuing police officer in this case never lost control of his vehicle and was in no way involved in the collision. Furthermore, in this case the respondent police officer was pursuing a suspect in a stolen vehicle and therefore the only method to apprehend the suspect was to stop the vehicle. Merely obtaining the tag number of the stolen vehicle would not have led to the apprehension of the suspect.

Lewis v. Sacramento was also a qualified immunity decision. This particular case however was not decided on the basis of qualified immunity. In fact, neither the District Court order granting the respondents' motion to dismiss nor the Eleventh Circuit Court of Appeals' opinion at any time even mentions qualified immunity.

It is further respectfully submitted that even if this Honorable Court in the *Lewis* case sets out a definite legal standard of conduct for substantive due process claims under the Fourteenth Amendment in a police pursuit case, it will have no bearing on the case at bar. Regardless of what standard is applied to this case, the petitioners cannot meet its burden of a Fourteenth Amendment substantive due process claim. There is no reported decision of any Circuit Court of Appeals to the knowledge of defense counsel, regardless of what standard is used, which finds a Fourteenth Amendment substantive due process violation in a police pursuit case when the pursuing police officer is not involved in the collision such as what occurred in this case. Regardless of whether one applies a "deliberate indifference" standard, "shocks the conscience" standard, "deliberate indifference" standard, or "reckless disregard" standard, petitioners' Fourteenth Amendment claim fails as a matter of law.

In cases involving much more egregious conduct on the part of the pursuing police officer, the Circuit Court of Appeals have time and time again found no Fourteenth Amendment violation regardless of the particular standard applied. *See, Temkin v. Fredrick County Comm'rs*, 945 F.2d 716 (4th Cir. 1991) (shocks the judicial conscience); *Cannon v. Taylor*, 782 F.2d 947 (11th Cir. 1986) (more than gross negligence); *Webber v. Medford*, 43 F.3d 1340 (10th Cir. 1994) (reckless indifference); *Jones v. Sherrill*, 827 F.2d 1102 (6th Cir. 1987) (gross negligence and outrageous conduct).

It is therefore respectfully submitted that the resolution of the *Lewis v. Sacramento County* case will have no bearing on this particular case.

II. No Conflict Amongst the Circuits as to Individual Liability of Respondent Baldwin

There is no conflict among the various Circuit Courts of Appeals as to the individual liability of the respondent deputy Baldwin in this case. Therefore this case does not meet the requirements of Rule 10(a) of the Rules of the Supreme Court.

As set out above, there is no Federal Circuit Court opinion which found a Fourteenth Amendment substantive due process violation under the factual circumstances presented in this case (suspect's fleeing vehicle loses control and strikes third party). Although there may be slight differences in the nomenclature used to describe the standard used by the various Circuit Courts in evaluating a Fourteenth Amendment substantive due process claim, the facts in this case simply do not rise to the level under any standard that has ever been enunciated by any Circuit Court of Appeals (see supra).

With regard to petitioners' Fourth Amendment claim, there is a consensus not only among the various Circuit Courts of Appeals but also from prior decisions of this Honorable Court that the petitioners were not seized under the facts as alleged in the first amended complaint and therefore the petitioners have no Fourth Amendment claim. *See, Brower v. County Inyo*, 289 U.S. 593, 109 S.Ct. 1378, 103 L.Ed. 2d 628 (1989); *California v. Hodari d*, 499 U.S. 621, 111 S.Ct. 1547, ___ L.Ed. 2d ___ (1991); *Horta v. Sullivan*, 4 F.3d 2 (5th Cir. 1993); *Galas v. McKee*, 81 F.2d 200 (6th Cir. 1986); *Jones v. Sherrill*, 827 F.2d 1102 (6th Cir. 1987); *Campbell v. White*, 916 F.2d 421 (7th Cir. 1990), *cert. denied*, 499 U.S. 922 (1991); *Roach v. City of Fredricktown*,

882 F.2d 294 (8th Cir. 1989); *Patterson v. City of Joplin*, 878 F.2d 262 (9th Cir. 1989); *Apodaca v. Rio-Arriba County Sheriff's Department*, 905 F.2d 1445 (10th Cir. 1990).

There is absolutely no authority to the contrary. The only cases which hold that there is a Fourth Amendment seizure in a police pursuit case is where there is an unreasonable and improper contact by the police officer's vehicle with the plaintiff's vehicle. *See, Brower v. County of Inyo, supra; Adams v. St. Lucie County Sheriff's Dept.*, 962 F.2d 1563 (11th Cir. 1992). However the petitioners have not alleged any such improper and unreasonable contact between the vehicle being operated by the respondent Deputy Baldwin and the vehicle in which the petitioners and petitioners' decedent were riding.

Since there is no conflict among the circuits as to the petitioners' claims under the Fourth and Fourteenth Amendments, then this case does not meet the requirements of Rule 10 and the petition should be denied.

III. Supervisory Liability

The issue of supervisory liability in this case also does not meet the requirements of Rule 10 of the Rules of the Supreme Court.

Both the District Court and the Circuit Court of Appeals relied upon the Supreme Court decision in *City of Los Angeles v. Heller*, 475 U.S. 796, 106 S.Ct. 1571, 89 L.Ed. 2d 806 (1986) in finding that the respondents were entitled to a dismissal of the petitioner's claims against the supervisory personnel and the employing entity. In

Heller, this Honorable Court held that where the individual officer involved did not commit any constitutional deprivation, then the supervisory defendants cannot be held liable as a matter of law. This holding is based on simple common sense. Obviously, if the individual officer did not violate any rights of the petitioners, then no custom, policy, or procedure of the supervisory defendants could be the "cause" or "moving force" of a constitutional violation. The deficiency or soundness of the alleged policy, custom, or procedure of the supervisory personnel simply becomes irrelevant.

Since the decision of the District Court and the Eleventh Circuit Court of Appeals relied upon a Supreme Court decision, it is therefore respectfully submitted that this issue does not meet the requirements of Rule 10 and the petition must be denied on this basis as well.

IV. Qualified Immunity and Adequate State Remedy

Two other grounds which the petitioners apparently urge in support of their petition for writ of certiorari are qualified immunity and no adequate state tort remedy.

On page 16 of the petitioners' petition, the petitioners indicate that there is a conflict between the Eleventh and Ninth Circuit. The petitioners erroneously assert that the Eleventh Circuit granted qualified immunity to the pursuing officer in this case while the Ninth Circuit denied qualified immunity to the pursuing officer in the *Lewis* case. As previously pointed out, the Eleventh Circuit did not base its decision concerning the individual liability of the pursuing officer in this case on qualified immunity.

Secondly, the *Lewis* case is completely inapposite factually to the case at bar. In *Lewis*, the pursuing police officer collided in high speed with the fleeing juveniles on their motorcycle. In this case there is no dispute and no allegation that the pursuing officer did not lose control of his vehicle or was otherwise involved in the collision.

On page 10 of the petitioners' petition, the petitioners insinuate to this Court that they have no available remedy under state tort law. However, nothing could be further from the truth. While it is true that under Georgia law, counties and, under certain circumstances, law enforcement officers have immunity, such immunity only extends to negligent acts. See *Logue v. Wright*, 260 Ga. 206, 392 S.E. 2d 235 (1990). However, immunity is not available to a law enforcement officer if the injured party can demonstrate an "intent to injure" on the part of the officer. See *Merrow v. Hawkins*, 266 Ga. 390, 467 S.E. 2d 336 (1996).

Furthermore, the petitioners had a more than adequate state law tort remedy if they had merely brought an action against the person who actually caused their injuries and damages, i.e., the fleeing felony suspect who crashed his car into the petitioners' vehicle. Instead, the petitioners attempt to misconstrue and pervert constitutional law in an effort to bring an action against an innocent police officer who was merely doing his job in attempting to apprehend a fleeing felon. However, the respondents recognize that it is trendy and popular to attempt to blame all of societies' ills upon the government and public servants such as local Sheriff's Departments and deputy sheriffs working for them. However, just because the petitioners brought suit against an innocent party as opposed to the guilty party does not

mean that they had no adequate state tort remedy. The petitioners' problem in this case is not that they have no remedy under state or federal law. Their problem is the facts of the incident do not indicate any liability under state or federal law in regard to the respondents.

CONCLUSION

It is respectfully submitted that the District Court and the Eleventh Circuit Court of Appeals correctly held that the plaintiffs' first amended complaint was subject to dismissal for failure to state a claim upon which relief can be granted. There is no meaningful split among the various Circuit Courts of Appeals that would have any bearing on the outcome of this case. The decisions of the Courts below were based upon ample prior case law from all the Circuit Courts of Appeals and this Honorable Court. This case simply does not meet the requirements of Rule 10 of the Rules of the Supreme Court for the granting of a writ of certiorari. Consequently, the writ should be denied.

Respectfully submitted this 11 day of November, 1997.

JAMES W. ELLISON
Counsel of Record
Attorney for Respondents

BURNSIDE, WALL, DANIEL,
ELLISON AND REVELL
P.O. Box 2125
454 Greene Street
Augusta, Georgia 30903
(706) 722-0768